

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	1:20CR348
	:	
v.	:	
	:	
ELOY ALBERTO ZAYAS-BERRIER	:	

**TRIAL BRIEF**

NOW COMES the United States of America, by and through Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina and submits the following:

**I. FACTS**

The following is a summary of the evidence the United States anticipates presenting at trial:

Defendant Eloy Alberto Zayas-Berrier (“Zayas”) is not a citizen of the United States. His alien file, which is an official record maintained by the Department of Homeland Security, is referenced as number XXX 798 348. It contains the relevant history to demonstrate he is not a citizen.

He was born on December 1, 19XX in Havana, Cuba and is a citizen of Cuba. On or about May 5, 1980, ZAYAS was paroled into the United States as a refugee as part of the Mariel boatlift.

On or about April 1, 1983, Zayas applied for asylum with the U.S. Immigration and Naturalization Service (“INS”) but an Immigration Judge ordered Zayas excluded and deported from the United States. Nevertheless, on March 30, 1988, the INS again paroled Zayas into the United States, pursuant to 8 C.F.R. 212.12.(b)(1), because the United States was unable to remove or deport aliens to Cuba. On or about December 6, 2008, Zayas filed an Application to Register Permanent Residence or Adjust Status (Form I-485) with United States Citizenship and Immigration Services (“USCIS”) based on his status as a Cuban citizen paroled into the United States after January 1, 1959. While Zayas’ I-485 Application was pending, on July 8, 2009, U.S. Immigration and Customs Enforcement (“ICE”) placed Zayas on an Order of Supervision. On September 30, 2009, USCIS denied Zayas’ I-485 application, but Zayas is legally allowed to be in the United States because he cannot at present be deported. The Order of Supervision remains in force and applicable to Zayas. It requires that he periodically report in-person to ICE.

Zayas has never applied for nor petitioned for United States citizenship. Zayas knew he was not a United States citizen at all relevant times. Zayas, in fact, is not and never has been a United States citizen.

On November 5, 2016, at the Pelham Fire Department, which is a so-called ‘one stop early voting’ site in Caswell County, North Carolina, Zayas registered to vote and voted. In order to register to vote, Zayas executed and submitted a voter registration form titled “North Carolina Voter Registration Application.” In box 1, this form states, “Are you a citizen of the United States of America?” Box 1 is marked “yes” indicating that Zayas is a citizen of the United States. The attestation above the signature line at the bottom of the form states, in pertinent part, **“I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that:** I am a United States citizen, as indicated above . . . .” (emphasis in original). Zayas signed the form, so attesting.

Immediately after registering to vote, also on November 5, 2016 at the Pelham Fire Department in Caswell County, North Carolina, Zayas cast a vote in the November 2016 election.

The November 2016 election was held, in part, for the purpose of electing a candidate for the office of President, Vice President, Member of the United States Senate, and Member of the United States House of Representatives.

On March 19, 2019, Department of Homeland Security agents had a voluntary, non-custodial discussion with Zayas outside his residence in

Caswell County, North Carolina. During the course of this discussion, he acknowledged that he is a citizen and native of Cuba, and not a citizen of the United States. He also acknowledged that he registered to vote, acknowledged his signature on the registration form, and indicated that he voted without assistance for all offices on the ballot in the November 2016 election.

## **II. TRIAL**

The trial is scheduled for the week of February 15, 2021. Because Monday, February 15, is a holiday, jury selection will begin on Tuesday, February 16. The Government anticipates the trial lasting 1-2 days. The trial will consist of testimony from personnel working for the state or local board of elections and federal law enforcement. The Government anticipates offering several public records and/or business records into evidence. the evidence may include certifications and/or custodians from the United States Department of Homeland Security, the North Carolina State Board of Elections, the North Carolina Department of Transportation, or other federal, state, or local government agencies. The Government does not anticipate at this time calling any expert witnesses.

### **III. INDICTED OFFENSES AND THEIR ELEMENTS**

Defendant Zayas is presently under Indictment in case number 1:20CR348-1, which charges him with making a false claim to United States citizenship in order to register to vote in violation of 18 U.S.C. § 1015(f), falsely claiming to be a United States citizen in violation of 18 U.S.C. § 911, and voting by a non-citizen in a federal election in violation of 18 U.S.C. § 611(a).

In order to prove a violation of 18 U.S.C. § 1015(f), the United States must prove two elements: (1) the defendant was an alien; and (2) the defendant knowingly made a false statement or claim to be a citizen of the United States in order to register to vote or vote in a Federal, State, or local election.

In order to prove a violation of 18 U.S.C. § 911, the United States must prove two elements: (1) the defendant falsely represented himself to be a United States citizen; and (2) the defendant did so willfully.

In order to prove a violation of 18 U.S.C. § 611(a), the United States must prove three elements: (1) the defendant is an alien, that is, not a United States citizen; (2) the defendant cast a vote; and (3) the election in which the defendant cast a vote was held, in part, for the election of a candidate for President, Vice President, Member of the U.S. Senate, or Member of the U.S. House of Representatives.

## CONCLUSION

The United States has identified no other issues that may arise at trial. If other issues are identified prior to trial, or raised during trial, the United States requests leave of court to supplement this brief in order to respond.

This the 1st day of February, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2021, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kathleen A. Gleason, Attorney for Defendant

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